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April 21, 2014

Kirk Profit  
GCSI  
120 N. Washington Square, Suite 110  
Lansing, MI, 48933

**Re: Follow-Up To Your Telephone Conversation On Friday, April 18, 2014  
Requesting Your Assistance In Having The Michigan Legislature  
Amend MCLS 600.3801, et al. and Specifically Section 600.3805 So As  
To Allow Township, City and Village Attorneys To Also Initiate  
Actions To Abate Public Nuisances**

Dear Kirk:

As a follow-up to our telephone conversation on **Friday, April 18, 2014**, this will confirm my request on behalf of the Ypsilanti Board of Trustees that you assist the Township in trying to amend MCL 600.3801 et al., commonly referred to as the Public Nuisance/Padlock statute. This statute has been used successfully in declaring buildings public nuisances wherein it has been shown that said structures have been used for specific unlawful purposes including **"... the unlawful manufacture, transporting, sale, keeping for sale, bartering, or furnishing of a controlled substance."**

However, this legal action to abate a public nuisance can only be brought by the Attorney General of the State of Michigan the County Prosecuting Attorney and for reasons that are somewhat unclear, **"... any citizen of the County."** This statute as it currently exists does not authorize Township, City or Village Attorneys to initiate these type of actions to abate public nuisances and while Washtenaw Prosecuting Attorney Brian Mackie is exploring as to whether he can appoint our office as a Special Prosecutor for purposes of bringing actions to padlock drug houses located in the Township, I believe it would be better in the long run if the statute was simply amended, as stated above.

Kirk Profit  
Nuisance/Padlock Statute  
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Right now, the Washtenaw County Sheriff's Department along with the Metro LawNet and CAT Teams have identified a number of residential properties located within Ypsilanti Township that we believe could be padlocked and seized if we had clear authority to initiate these actions. We certainly appreciate the opportunity to partner with the County on any issue that will improve the health, safety and welfare of our residents and any assistance you can provide towards achieving this goal would be greatly appreciated.

I have attached for your convenience a copy of MCL 600.3801, et al. and again, our focus right now is amending Section 600.3805 entitled "**Action to Abate; Parties.**"

If after review of this correspondence and attachment you have any questions or I can be of further assistance, please contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Wm. Douglas Winters".

Wm. Douglas Winters  
/ck  
Enclosures

cc: Township Board  
Mike Radzik  
Ron Fulton  
Joe Lawson  
Bill Elling  
Jill Kulhanek  
Eric Copeland  
Vic Chevrette  
Dennis O. McLain

## MCLS § 600.3801

This document is current through 2014 P.A. 63.

*Michigan Compiled Laws Service > Chapter 600 Revised Judicature Act of 1961 > Act 236 of 1961 Revised Judicature Act of 1961 > Chapter 38 Public Nuisances*

### § 600.3801. Nuisance; injunction; abatement; guilt; "controlled substance" defined.

Sec. 3801. (1) A building, vehicle, boat, aircraft, or place is a nuisance if 1 or more of the following apply:

- (a) It is used for the purpose of lewdness, assignation, prostitution, or gambling.
  - (b) It is used by, or kept for the use of, prostitutes or other disorderly persons.
  - (c) It is used for the unlawful manufacture, transporting, sale, keeping for sale, bartering, or furnishing of a controlled substance.
  - (d) It is used for the unlawful manufacture, transporting, sale, keeping for sale, bartering, or furnishing of vinous, malt, brewed, fermented, spirituous, or intoxicating liquors or mixed liquors or beverages, any part of which is intoxicating.
  - (e) It is used for conduct prohibited by section 49 of the Michigan penal code, 1931 PA 328, MCL 750.49.
- (2) All furniture, fixtures, and contents of a building, vehicle, boat, aircraft, or place described in subsection (1) and all intoxicating liquors in the building, vehicle, boat, aircraft, or place are also declared a nuisance.
- (3) All controlled substances and nuisances shall be enjoined and abated as provided in this act and the court rules.
- (4) A person, or a servant, agent, or employee of the person, who owns, leases, conducts, or maintains a building, vehicle, or place described in subsection (1) is guilty of a nuisance.
- (5) As used in this section, "controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

### History

Pub Acts 1961, No. 236, Ch. 38, § 3801, by § 9911 eff January 1, 1963; amended by Pub Acts 1988, No. 2, imd eff February 5, 1988, by § 2 eff April 1, 1988; Pub Acts 2012, No. 352, eff December 13, 2012.

### Annotations

### Notes

### Prior codification:

Pub Acts 1925, No. 389, §§ 1, 18; Pub Acts 1951, No. 80, § 1 (former §§ 692.251, 692.268).

MSA § 27A.3801

### Editor's notes:

See Editor's notes at act heading.

### Amendment Notes

The 2012 amendment by PA 352 rewrote the section.

### Commentary

### Source

CL (1948) 692.251. [These Committee Notes accompanied the section as originally enacted.]

### NOTES TO DECISIONS

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## MCLS § 600.3805

This document is current through 2014 P.A. 63.

Michigan Compiled Laws Service > Chapter 600 Revised Judicature Act of 1961 > Act 236 of 1961 Revised Judicature Act of 1961 > Chapter 38 Public Nuisances

### § 600.3805. Action to abate; parties.

Sec. 3805. The attorney general of the state of Michigan, the prosecuting attorney or any citizen of the county, may maintain an action for equitable relief in the name of the state of Michigan, upon the relation of such attorney general, prosecuting attorney or citizen to abate said nuisance and to perpetually enjoin any person, his servant, agent, or employee, who shall own, lease, conduct or maintain such building, vehicle, boat, aircraft or place, from permitting or suffering such building, vehicle, boat, or aircraft or place owned, leased, conducted or maintained by him, or any other building, vehicle, boat, aircraft or place conducted or maintained by him to be used for any of the purposes or by any of the persons set forth in section 3801, or for any of the acts enumerated in said section. When the injunction has been granted, it shall be binding on the defendant throughout the judicial circuit in which it was issued.

### History

Pub Acts 1961, No. 236, Ch. 38, § 3805, by § 9911 eff January 1, 1963.

### Annotations

### Notes

### Prior codification:

Pub Acts 1925, No. 389, § 2; 1951, No. 80, § 1 (former § 692.252).

MSA § 27A.3805

### Editor's notes:

See Editor's notes at act heading.

### Commentary

### Source

CL (1948) 692.252. [These Committee Notes accompanied the section as originally enacted.]

### NOTES TO DECISIONS

#### 1. Attorney general.

#### 2. Who may abate nuisance.

##### 1. Attorney general.

The attorney general has no standing in a suit on his own motion on behalf of the people of the state to enjoin a city from emptying raw sewage into a stream, where the proofs fail to show a public nuisance even though a private nuisance is shown and the city is acting in violation of an order of the state department of health directing it to establish a sewage treatment system. *Dougherty v. Howell*, 231 Mich. 401, 204 N.W. 91, 1925 Mich. LEXIS 648 (1925).

Attorney general was entitled to judgment as a matter of law on its claim that the operator of the lottery club was running a public nuisance from its office building, in violation of statutory law prohibiting the use of a building for gambling purposes, and, thus, that it could enjoin that nuisance pursuant to *MCL 600.3805*. No dispute existed about the facts regarding the use of the office and, thus, the only issue was the legal effects of those facts, and the legal effect was that the operator was using the office to place bets in violation of the state's

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## MCLS § 600.3810

This document is current through 2014 P.A. 63.

Michigan Compiled Laws Service > Chapter 600 Revised Judicature Act of 1961 > Act 236 of 1961 Revised Judicature Act of 1961 > Chapter 38 Public Nuisances

### § 600.3810. Owner; definition; authority of court; closing of premises; vehicles; parties-defendant.

Sec. 3810. (1) An owner of the premises within the meaning of this chapter is deemed to be the grantee or vendee of the last recorded deed or contract which describes the premises, or any part thereof upon which any nuisance exists as heretofore defined, and the naming of such person a party defendant gives the court authority to abate the nuisance by closing the premises and such defendant is subject to the order and judgment of the court.

- (2) An owner of a vehicle within the meaning of this chapter is deemed to be the person in whose name the vehicle is titled, and any chattel mortgagee or assignee thereof or other lien holder whose lien has been filed in the office of the register of deeds prior to the commencement of suit, and the plaintiff shall join such mortgagee, assignee or lien holder as a party defendant.

### History

Pub Acts 1961, No. 236, Ch. 38, § 3810, by § 9911 eff January 1, 1963.

### Annotations

### Notes

### Prior codification:

Pub Acts 1925, No. 389, § 6; 1945, No. 299 (former § 692.256).

MSA § 27A.3810

### Editor's notes:

See Editor's notes at act heading.

### Commentary

### Source

CL (1948) 692.256. [These Committee Notes accompanied the section as originally enacted.]

### NOTES TO DECISIONS

A possessor of land is subject to liability for a nuisance for an abatable artificial condition on the land if (1) he knows or should know of the condition and the nuisance or unreasonable risk of nuisance involved, (2) he knows or should know that it exists without the consent of those affected by it, and (3) he has failed after a reasonable opportunity to take reasonable steps to abate the condition or to protect the affected persons against it. Sanford v. Detroit, 143 Mich. App. 194, 371 N.W.2d 904, 1985 Mich. App. LEXIS 2626 (1985).

In proceedings under 600.3801, whereunder building was ordered padlocked for one year on ground that it was allegedly being used for prostitution, where service was had upon land contract vendor, but with respect to land contract purchaser, police went to address listed for purchaser on land contract, where occupants of premises disclaimed all knowledge of such person, and no further attempts were made to notify purchaser of pendency of suit, it would be held that purchaser was real party in interest under § 600.3810, and that procedures used in instant case to notify such defendant of pendency of action were inadequate under existing Michigan law. State ex rel. Wayne County Prosecutor v. Gladstone, 64 Mich. App. 55, 235 N.W.2d 60, 1975 Mich. App. LEXIS 1232 (1975).

### Research References & Practice Aids

### Hierarchy Notes:

MCLS Ch. 600. Act 236

Michigan Compiled Laws Service

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## MCLS § 600.3815

This document is current through 2014 P.A. 63.

Michigan Compiled Laws Service > Chapter 600 Revised Judicature Act of 1961 > Act 236 of 1961 Revised Judicature Act of 1961 > Chapter 38 Public Nuisances

### § 600.3815. Admissible evidence; unnecessary proof; judgment and order.

Sec. 3815. (1) In any action brought under this chapter, evidence of the general reputation of the building, vehicle, boat, aircraft or place is admissible for the purpose of proving the existence of the nuisance.

(2) Proof of knowledge of the existence of the nuisance on the part of the defendants or any of them, is not required.

(3) It is not necessary for the court to find the property involved was being used as and for a nuisance at the time of the hearing, or for the plaintiff to prove that the nuisance was continuing at the time of the filing of the complaint, if the complaint is filed within 30 days after any act, any violation, or the existence of a condition herein defined as a nuisance, but on finding that the material allegations of the complaint are true, the court shall render judgment and order of abatement as hereinafter provided.

### History

Pub Acts 1961, No. 236, Ch. 38, § 3815, by § 9911 eff January 1, 1963.

### Annotations

### Notes

### Prior codification:

Pub Acts 1925, No. 389, § 9; 1951, No. 80, § 1 (former § 692.259).

MSA § 27A.3815

### Editor's notes:

See Editor's notes at act heading.

### Commentary

### Source

CL (1948) 692.259. [These Committee Notes accompanied the section as originally enacted.]

### NOTES TO DECISIONS

1. Construction and effect.

2. Admissibility of evidence.

3. Sufficiency of evidence.

4. —Portion of premises used.

1. Construction and effect.

Clear language of this section providing that proof of knowledge of nuisance on part of any of defendants is not required as prerequisite to abatement of public nuisance under so-called padlock statute thereby negated any necessity for allegation or proof of defendant owner's knowledge of or acquiescence in wrongful acts on his premises in action to abate alleged public nuisance thereon under statute. State ex rel. Patterson v. Weaver, 74 Mich. App. 462, 254 N.W.2d 68, 1977 Mich. App. LEXIS 744 (1977).

There is well established authority rejecting the "innocent owner defense"; therefore, the forfeiture of a car jointly owned by petitioner and her husband, but used by petitioner's husband to engage in sexual activity with

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## MCLS § 600.3820

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### § 600.3820. Contempt; punishment; procedure; bail.

Sec. 3820. If any order or injunction granted under the provisions of this chapter is violated, the court may summarily try and punish the offender as for contempt, and the person so offending shall be punished by a fine of not more than \$1,000.00, or by imprisonment in the county jail not more than 6 months, or by both fine and imprisonment, in the discretion of the court. Such violation shall be charged by a motion supported by affidavit, and the court, if satisfied of the sufficiency thereof, shall immediately issue a bench warrant for the arrest of such offender and to bring him before such court to answer for such misconduct. The court may, in its discretion, permit such person arrested to give bail and fix the amount thereof pending hearing of the matters charged in such motion.

### History

Pub Acts 1961, No. 236, Ch. 38, § 3820, by § 9911 eff January 1, 1963.

### Annotations

### Notes

### Prior codification:

Pub Acts 1925, No. 389, § 11 (former § 692.261).

MSA § 27A.3820

### Editor's notes:

See Editor's notes at act heading.

### Commentary

### Source

CL (1948) 692.261. [These Committee Notes accompanied the section as originally enacted.]

### NOTES TO DECISIONS

1. Operation and effect.
2. Procedure generally.
3. Hearing or opportunity to be heard.

#### 1. Operation and effect.

Contempt proceedings under former special statute relating to the abatement of certain places declared to be nuisances could not be predicated on hearsay, since in the enactment of such statute it must be assumed, in the absence of a provision to the contrary, that the legislature contemplated the recognition of the rule established and followed under the general law. In re Randall, 336 Mich. 335, 57 N.W.2d 906, 1953 Mich. LEXIS 485 (1953).

In suit by state to determine automobile to be nuisance and for its sale as having been used in gambling operations, where defendant had not been found guilty of contempt by reason of disobedience to injunctive order, decree was erroneous in withholding from defendant \$500 as costs, and it was duty of court to return to him entire sum which had been taken from him on his arrest and as to which there was no evidence that it had been used in gambling, less amount of costs taxed in circuit court and consisting of attorneys' fees and statutory costs. State ex rel. Dowling v. Martin, 314 Mich. 317, 22 N.W.2d 381, 1946 Mich. LEXIS 410 (1946).

## MCLS § 600.3825

This document is current through 2014 P.A. 63.

Michigan Compiled Laws Service > Chapter 600 Revised Judicature Act of 1961 > Act 236 of 1961 Revised Judicature Act of 1961 > Chapter 38 Public Nuisances

**§ 600.3825. Order of abatement; closing of building; removal of contents; sale; vehicles; personal property; use of closed building; contempt.**

Sec. 3825. (1) If the existence of the nuisance is established in an action as provided in this chapter, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all furniture, fixtures and contents therein and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of 1 year, unless sooner released as in this chapter provided.

- (2) Any vehicle, boat, or aircraft found by the court to be a nuisance within the meaning of this chapter, is subject to the same order and judgment as any furniture, fixtures and contents as herein provided.
- (3) Upon the sale of any furniture, fixtures, contents, vehicle, boat, or aircraft as provided in this section, the officer executing the order of the court shall, after deducting the expenses of keeping such property and costs of such sale, pay all liens according to their priorities which may be established by intervention or otherwise at the hearing or in other proceedings brought for that purpose as being bona fide and as having been created without the lienor having any notice that such property was being used or was to be used for the maintenance of a nuisance as herein defined, and shall pay the balance to the state treasurer to be credited to the general fund of the state.
- (4) If any person uses a building or place so directed to be closed, with knowledge that such building or place is closed by order of the court, he shall be punished as for contempt, as provided in section 3820.

### History

Pub Acts 1961, No. 236, Ch. 38, § 3825, by § 9911 eff January 1, 1963.  
Annotations

### Notes

#### Prior codification:

Pub Acts 1925, No. 389, § 12; 1951, No. 80, § 1 (former § 692.262).

MSA § 27A.3825

#### Editor's notes:

See Editor's notes at act heading.

### Commentary

#### Source

CL (1948) 692.262. [These Committee Notes accompanied the section as originally enacted.]

### NOTES TO DECISIONS

1. Constitutionality.
2. Construction, operation and effect.
3. Discretion of court.
4. Sale of nuisance.

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## MCLS § 600.3830

This document is current through 2014 P.A. 63.

Michigan Compiled Laws Service > Chapter 600 Revised Judicature Act of 1961 > Act 236 of 1961 Revised Judicature Act of 1961 > Chapter 38 Public Nuisances

### **§ 600.3830. Removal and sale of property; fees; closing of building; loss of property exemptions; liability of officers.**

Sec. 3830. (1) For removing and selling the movable property, the officer is entitled to charge and receive the same fees as he would for levying upon and selling like property upon execution, and for closing the building or place and keeping it closed, a reasonable sum shall be allowed by the court.

- (2) Any person found guilty of maintaining a nuisance under the provisions of this chapter shall forfeit the benefit of all property exemptions, so far as the satisfaction of the order or judgment of the court requires the same, and the taking and disposing of any property of the defendant or defendants by virtue of such order or judgment by any officer directed to execute the same is not a trespass, nor shall such officer be liable either civilly or criminally therefor, if a proper return of such order or judgment and accounting for such property is made to the court within 10 days after the order or judgment is executed.

#### **History**

Pub Acts 1961, No. 236, Ch. 38, § 3830, by § 9911 eff January 1, 1963.

#### **Annotations**

#### **Notes**

#### **Prior codification:**

Pub Acts 1925, No. 389, § 13 (former § 692.263).

MSA § 27A.3830

#### **Editor's notes:**

See Editor's notes at act heading.

#### **Commentary**

#### **Source**

CL (1948) 692.263. [These Committee Notes accompanied the section as originally enacted.]

#### **Research References & Practice Aids**

#### **Hierarchy Notes:**

MCLS Ch. 600. Act 236

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## MCLS § 600.3835

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*Michigan Compiled Laws Service > Chapter 600 Revised Judicature Act of 1961 > Act 236 of 1961 Revised Judicature Act of 1961 > Chapter 38 Public Nuisances*

### § 600.3835. Proceeds from sale of personalty; application.

Sec. 3835. The proceeds of the sale of the personal property, as provided in section 3830, shall be applied in payment of the costs of the action and abatement, and the balance, if any, shall be paid to the persons entitled thereto as the court may direct.

### History

Pub Acts 1961, No. 236, Ch. 38, § 3835, by § 9911 eff January 1, 1963.

### Annotations

### Notes

### Prior codification:

Pub Acts 1925, No. 389, § 14 (former § 692.264).

MSA § 27A.3835

### Editor's notes:

See Editor's notes at act heading.

### Commentary

### Source

CL (1948) 692.264. [These Committee Notes accompanied the section as originally enacted.]

### Research References & Practice Aids

### Statutory references:

Section 3830, above referred to, is § 600.3830.

### Hierarchy Notes:

MCLS Ch. 600. Act 236

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## MCLS § 600.3840

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Michigan Compiled Laws Service > Chapter 600 Revised Judicature Act of 1961 > Act 236 of 1961 Revised Judicature Act of 1961 > Chapter 38 Public Nuisances

**§ 600.3840. Delivery of premises to owner; conditions; bond; abatement; liability of sureties; appeal; stay of order of abatement.**

Sec. 3840. (1) If the owner of such building or place pays all costs of the proceeding, and files a bond with sureties approved by the circuit judge, in the penal sum of not less than \$1,000.00 nor more than \$50,000.00, conditioned that he will immediately abate the nuisance and prevent the same from being established or kept therein within a period of 1 year from the date of the judgment, the court may order such premises to be delivered to the owner and if the bond is given and costs therein paid before order of abatement, the action shall be thereby abated as to that building only.

- (2) If it appears to the court that the conditions of the bond have been violated, the principal and sureties thereon are liable thereon for the full penalty of the bond in an action brought in the name of the state of Michigan, or upon motion in the action in which the bond was given.
- (3) Should the defendants, or any of them, appeal to the supreme court from the order and judgment rendered, the injunction or order of abatement shall not be stayed pending the appeal, except that stay may be granted or the order of abatement may be modified pending such appeal upon the written order of 2 justices of the supreme court.

### History

Pub Acts 1961, No. 236, Ch. 38, § 3840, by § 9911 eff January 1, 1963.

### Annotations

### Notes

### Prior codification:

Pub Acts 1925, No. 389, § 15 (former § 692.265).

MSA § 27A.3840

### Editor's notes:

See Editor's notes at act heading.

### Commentary

### Source

CL (1948) 692.265.

### Committee Comment

The last clause of § 600.3840 (2) was added to conform to Rule 525. See Rule 782, supplementing this chapter. [These Committee Notes accompanied the section as originally enacted.]

### Opinion Notes

### Agency Opinions

Former statute offered no protection to owner who was also guilty of conducting the nuisance. Op Atty Gen, January 19, 1945, No. 0-3031

### Research References & Practice Aids

### LexisNexis® Michigan analytical references:

Michigan Law and Practice, Criminal Law and Procedure § 1203

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